

### REMARKS

The Office Action issued by the Examiner and the citations referred to in the Office Action have been carefully considered. Claims 1, 11, 14, and 7 have been amended. Claim 4 has been cancelled. Claims 32-38 have been added.

### Rejections under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1, 9, 12, 14, 15 asserting Berg et al. (US 4,841,962) anticipates the claims. In order to sustain a rejection under 35 U.S.C. § 102(b) the prior art reference must teach every aspect of the claimed invention either explicitly or implicitly in a single prior art reference. (See, MPEP 706.02 and MPEP 2131).

With respect to claims 1, 9, 12, 14, and 15, Applicants have amended Claim 1 to include the limitations of previously considered Claim 4. Since the claim limitations included in amended Claim 1 are not found in Berg et al., Berg et al. does not anticipate Claim 1. Accordingly, each and every element of amended Claim 1 is not found in the Berg et al. reference. Specifically, amended Claim 1 now refers to a hydrocolloid composition comprising an ethylene propylene diene monomer polymer (EPDM) wherein there is about 25% to 75% ethylene and about 75% to 25% propylene. As admitted by the Examiner (page 3 of the office action mailed 6/3/2004), Berg et al. does not teach the ratio of ethylene to propylene in the EPDM. Thus, because Berg et al. does not teach this ratio, Berg et al. does not anticipate this amended Claim 1.

The EPDM described in Berg et al, is located in an outer layer of a backing and in a second layer of the backing, and is not part of or make up a hydrocolloid composition. (See Fig. 1 of Berg et al., Col 5 lines 4-36 and 41-68). As evidenced by Fig 1. in Berg et al. and the specification, the layers containing EPDM do not come into contact with the skin. However, the present disclosure contains EPDM in an *adhesive* portion, which is in direct contact with the skin.

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Furthermore, Claims 9, 12, 14, and 15 all depend from Claim 1. Because dependent claims are construed to incorporate by reference all the limitations of the claim to which they refer, Claims 9, 12, 14, and 15 are not anticipated by Berg. (See, MPEP 608.01(n) and 37 C.F.R. § 1.75(c)). Therefore, it is respectfully submitted that all of the Examiner's rejections under 102 have been overcome. Applicants respectfully request that these rejections be withdrawn.

#### Rejections under §103(a)

The Examiner has rejected Claims 4, 11, 16 as being unpatentable over Berg et al. (US 4,841,962) in view of Cilento et al. (US 6,270,794) and Claim 17 as being unpatentable over Berg et al. (US 4,841,962) in view of Chen (US 6,303,700) (Applicants note that a reference number for Chen was not provided by the Examiner in the Office Action, thus Applicants are assuming that the Examiner is referring to the Chen patent, which is referenced in the Notice of References Cited included in the office action of 6/3/2004). Claim 4 has been cancelled and its limitations incorporated into Claim 1. Accordingly, Claims 11, 16 and 17, which directly or indirectly depend from amended Claim 1, clearly distinguish over the prior art, since it is believed that the composition defined in these claims differs essentially and in an unobvious, highly advantageous manner from the compositions disclosed in the references.

The combinations of references cited by the Examiner fail to teach the distinctive features of Applicants' invention as at least defined by amended Claim 1. That a prior art reference, here Berg et al., could be modified to form the claimed composition does not supply a suggestion to do so. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski*, 871 F2d 115 (Fed. Cir. 1989). The Examiner has admitted that Berg et al. does not expressly teach a ratio of ethylene to propylene in EPDM. Accordingly, Berg et al. could not suggest the desirability of such a modification of the EPDM disclosed therein.

The Examiner also asserts that the exact concentration of hydrophilic material in the composition and the inclusion of butyl rubber is not disclosed or taught by Berg et al. The Examiner also states that Cilento et al. teaches that a portion of a polyisobutylene (PIB) matrix disclosed therein can be substituted with butyl rubber. However, Applicants fail to see how Cilento et al.'s disclosure of substituting a portion of the polyisobutylene matrix with butyl rubber relates to the claimed hydrocolloid composition comprising an ethylene propylene diene monomer polymer as claimed herein and the EPDM of Berg et al.

The Examiner's assertions that "at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to varied the ratios of ethylene and propylene in the EPDM, to vary the concentration of the hydrophilic material in the composition and to add butyl rubber to the polyisobutylene matrix" and also that "One of ordinary skill in the art would have been motivated to do this to provide the proper barrier permeation protection desired for the wound (sic) dressing, to vary the amount of moisture absorbed by the wound dressing and to provide a polyisobutylene matrix that helps bind the absorbing powders in the copolymer network."

Such assertions are unsupported by the references cited. Applicants believe that these assertions in the rejection are in lieu of citing further references, which would make a rejection of the pending claims based on a further combination of these multiple references even less valid or compelling. These unsupported assertions have been condemned in a recent decision of the Court of Appeals for the Federal Circuit. *In re Zurko*, (Fed. Cir. No. 96-1258; 8/2/01). The Court stated: "With respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."

Applicants respectfully request that the Examiner clearly point out how these incongruent teachings/disclosures of Cilento et al. (polyisobutylene (PIB) matrix

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substitution with butyl rubber) relate to the EPDM of Berg et al. and to the claimed composition, particularly wherein there is claimed about 25% to 75% ethylene and about 75% to 25% propylene making up an EPDM polymer.

Applicants believe that combining the references discussed above would not lead to the claimed invention. The present invention employs a new, non-obvious combination to accomplish the objectives set out in the present application.

The Examiner has failed to show a suggestion or a motivation to combine the cited references. Is the Examiner asserting that 25% to 75% of polyisobutylene can be substituted with butyl rubber? Such a substitution does not teach or even relate to varying the amount of ethylene and propylene in an ethylene propylene diene monomer (EPDM), as claimed in the instant application. The addition of an amount of butyl rubber to polyisobutylene, found in Cilento et al., does not teach or suggest changing the amounts of ethylene and propylene ratios in an EPDM compound. Accordingly, Cilento et al., alone or in combination with Berg et al. does not suggest or teach the elements of amended Claim 1. Therefore, absent such teachings, there is no suggestion to combine Cilento et al. and Berg et al., and thus Applicants assert that the present claims are not obvious under 35. U.S.C. §103(a).

Claims 11, 16, and 17 depend from amended Claim 1. Because dependent claims are construed to incorporate by reference all the limitations of the claim to which they refer, Claims 11, 16 and 17 are not obvious for the same reasons that amended Claim 1 is unobvious. See, MPEP 608.01(n) and 37 C.F.R. § 1.75(c). In view of these considerations, it is respectfully submitted that the rejections under 35. U.S.C. §103(a) of Claims 11, 16, and 17 should be withdrawn.

Concerning Claims 32-38, these new claims each depend from amended Claim 1, thus they are construed to incorporate by reference all of the limitations of the claim(s) to which they refer. These new dependent claims simply further define the invention at least in part by the recitation of particular ethylene and propylene ratios in an EPDM

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compound. Additionally, the elements of Claims 32-38 are all supported in the original, as-filed application and do not present new matter.

Applicants have complied with all requirements made in the above referenced communication. Accordingly, reexamination of this application on the merits is respectfully requested. Should matters remain, which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicants' undersigned agent.

The Commissioner is authorized to charge \$55.00 for an extension to file a response within the first month and any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-2638.

Respectfully submitted,

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By



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